

LIBRARY
SUPREME COURT, U.S.



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 704 41

OKLAHOMA TAX COMMISSION,

Appellant,

vs.

MAGNOLIA PETROLEUM COMPANY

APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA

STATEMENT AS TO JURISDICTION

MAC Q. WILLIAMSON,

Attorney General;

FRED HANSEN,

Attorney General;

R. F. BARRY,

Counsel for Appellant.

INDEX

SUBJECT INDEX

	Page
Statement as to jurisdiction	1
Nature of the case	2
State statute involved	2
Statutory provisions sustaining jurisdiction	3
Cases believed to sustain jurisdiction	4
The Federal question	4
Appendix "A"—Opinion of the Supreme Court of Oklahoma	6

TABLE OF CASES CITED

<i>Helvering v. Mountain Producers Corporation</i> , 303 U. S. 379	4
<i>Oklahoma Tax Commission v. United States</i> , 319 U. S. 598	4
<i>Santa Rita Oil Company v. State Board of Equalization</i> , 116 Pac. (2d) 1012	4

STATUTES CITED

General Allotment Act of June 28, 1906, 34 Statute 339	3
Judicial Code, Section 237(a), as amended by the Acts of February 13, 1925 and January 31, 1928 (28 U.S.C. 344(a) and 861(a))	3
Oklahoma Statutes 1941, Ch. 20, Title 68, Sec. 861, et seq., as amended by Ch. 20, Sec. 827, O.S. 1947, Cumulative Supplement (1947 S.L. page 495, Articles 1 and 2)	2

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 704

OKLAHOMA TAX COMMISSION,

Appellant,

vs.

MAGNOLIA PETROLEUM COMPANY,

Appellee.

STATEMENT AS TO JURISDICTION

This case originated before the Oklahoma Tax Commission where hearing was duly had and the tax assessment complained of duly made by a timely order of that Commission that under the laws of the State of Oklahoma an aggrieved taxpayer in the exercise of statutory rights, may file a suit in the District Court of Oklahoma County wherein a trial of the issues may be had; such a case was not so filed in the District Court of Oklahoma County, but the taxpayer elected to appeal directly from the order of the Oklahoma Tax Commission to the Supreme Court of Oklahoma, wherein the judgment and order of the Oklahoma Tax Commission was reversed and in which the said State Supreme Court held:

“A lessee producing oil from lands of restricted Potawatomie, Apache, Comanche, Otoe and Missouri

Indians under departmental lease approved by and subject to supervision of the Interior of the United States, is engaged in the operation of a governmental instrumentality or agency and in the absence of permissive legislation by Congress, or appropriate Federal consent or waiver or withdrawal of immunity, the oil production or the oil as produced is not subject to the state production tax of five per cent of the value of the oil produced."

That upon the rendition of said opinion, petition for rehearing was filed with the Supreme Court of the State, which said petition for rehearing was by said court overruled on the 27th day of January, 1948.

Whereupon, a motion to stay mandate pending an appeal to the Supreme Court of the United States was timely filed and on the 10th day of February, 1948, the Supreme Court of the State of Oklahoma made and entered the following order:

"In the Supreme Court of the State of Oklahoma The Clerk is Hereby Directed to Enter the Following Orders: 32,678—Magnolia Petroleum Co. v. Oklahoma Tax Commission. Ordered that mandate in the above styled causes be stayed until April 29, 1948, pending appeal to the U. S. Supreme Court, and thereafter until Final disposition by that court if appeals are perfected within time allowed."

The state Statute involved in this controversy is found in Ch. 20, Title 68, Sec. 821 *et seq.* O. S. 1941, as amended by Ch. 20, Sec. 827, O. S. 1947, Cumulative Supplement, and also found in 1947 S. L. Page 495 as Articles 1 and 2. The levying clause under which the said tax involved in this litigation is levied is Sec. 821 O. S. 1941, and levies a tax of 5% on the gross amount at the actual cash value of all the oil and gas produced within the State of Oklahoma, which said tax when so levied shall be in lieu of all taxes by the

State, counties, cities, towns, townships, school districts and other municipalities upon any property rights attached to or inherent in the right to said minerals, upon producing leases for the mining of petroleum or other crude oil or other mineral oil, or for natural gas and/or casinghead gas, upon the mineral rights and privileges for the minerals aforesaid belonging or appertaining to land, upon the machinery, appliances and equipment used in and around any well producing petroleum or other crude or mineral oil. The said Act further provides that the State Board of Equalization upon its initiative or upon motion may take testimony and if the rate of tax levied shall be found to be greater or less than the general *ad valorem* rate of taxation, then the said Board may raise or lower the rate to conform to the general average of the *ad valorem* tax rate throughout the State in order to effect uniformity and equality under the Constitution since the gross production tax is in lieu of and a substitute for the *ad valorem* property tax.

The decision of the Supreme Court in holding that said Statute was invalid as applied to oil and gas produced from restricted lands belonging to the oil company producer, in that to apply such tax, violated the rights of said oil company, the Magnolia Petroleum Company, under the Act of Congress, particularly the General Allotment Act of June 28, 1906, 34 Statute, 339, and the amendments thereto wherein the trust period of said property belonging to restricted Indians of one-half or more Indian Blood was extended finally to 1984.

The Federal statutory provision believed to sustain the jurisdiction of this court is Sec. 237 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and the Act of January 31, 1928 (28 U. S. C. Sec. 344 (a), 861 (a)).

Some of the decisions which are believed to sustain the jurisdiction are those interpreting the said Acts of Congress

relating to Indian Restrictions in the light of the State taxing power, to-wit:

Oklahoma Tax Commission v. the United States, 319 U. S. 598;

Helvering v. Mountain Producers Corporation, 303 U. S. 379, and a State case.

Santa Rita Oil Company v. State Board of Equalization (Idaho) 116 Pac. (2), 1012, which passes squarely and identically upon all the issues herein and following the *Mountain Producers'* case, sustains the tax of the State of Idaho on restricted Indian properties holding that all cases heretofore standing in the way of the admissibility of such tax are overruled.

In that case it is further held:

"Nondiscriminatory operators' net proceeds and producers' license or gross production taxes on production of oil and gas under lease of trust patent Indian land do not constitute such direct and substantial interference with any function of federal government as to be invalid. Rev. Codes 1935, §§20888-2096.2, 2397-2408."

The Federal Question

The Federal question involved in this lawsuit is the denial to the State of Oklahoma and the Oklahoma Tax Commission of the right to levy, assess and enforce the revenue laws enacted for the support of the State and local governments on the ground that some contravene the Indian treaties with the United States, the Allotment Act and in violation of the interpretation and construction of such treaties and Acts by the judiciary of both the State and national governments and particularly by the judgments of the United States courts, including the Supreme Court thereof, in that to deny the State of its right to tax, tends to destroy State and local government and deprives the State

of its exercise of its first sovereign power necessary for the existence, and denies to the State the equal protection of the law as among States under the Constitution of the United States. Said Federal questions were raised in the briefs filed in the Supreme Court and in the petition for rehearing and in the oral argument presented to said court.

It is, therefore, apparent that the construction and interpretation of the Acts of Congress, detrimental and prejudicial to the rights of Oklahoma and the construction and interpretation of the Constitution of the United States with reference to the Oklahoma taxing statute are directly involved and drawn into question and have been construed adversely to the rights of the State of Oklahoma and Oklahoma Tax Commission, prosecuting this case in its behalf under statutory authority to do so, as the constituted tax collecting agency for the collection and enforcement of all State tax measures.

That the judgment of the State Supreme Court constitutes a final judgment of the highest court of the state under the rules of this Court and the Act of Congress contained in the Judicial Code.

Wherefore, it is respectfully submitted that for the reasons stated, this Court has jurisdiction of the appeal.

Dated this 19th day of February, 1948.

Respectfully submitted,

MAC Q. WILLIAMSON,
Attorney General;

FRED. HANSEN,
Asst. Attorney General;

R. F. BARRY,
Counsel for Appellants.

APPENDIX "A"

Filed: In Supreme Court of Oklahoma, Sept. 23, 1947.
 Andy Payne, Clerk.

**IN THE SUPREME COURT OF THE STATE OF
 OKLAHOMA**

No. 32678

MAGNOLIA PETROLEUM COMPANY, a Corporation, Plaintiff
in Error,

vs.

OKLAHOMA TAX COMMISSION, Defendant in Error.

Syllabus

1. A lessee producing oil from lands of restricted Pottawatomie, Apache, Comanche, Otoe and Missouri Indians under departmental lease approved by and subject to supervision of the Secretary of the Interior of the United States, is engaged in the operation of a governmental instrumentality or agency and in the absence of permissive legislation by Congress, or appropriate Federal consent or waiver or withdrawal of immunity, the oil production or the oil as produced is not subject to the State gross production tax of five per cent of the value of the oil produced.

Appeal from Oklahoma Tax Commission.

From order assessing gross production and oil excise or proration taxes on certain oil production the Magnolia Petroleum Corporation appeals.

Order Reversed

Wallace Hawkins, Dallas, Texas; Robert W. Richards, Okla. City, Okla., For Plaintiff in Error.

E. L. Mitchell, Edmund J. Armstrong, and C. W. King, of Oklahoma City, Okla., For Defendant in Error.

WELCH, J:

This appeal tests the validity of certain tax assessments, the gross production and oil excise tax, made against the Magnolia Petroleum Company for oil production under departmental leases on restricted lands or trusts title lands of Pottawatomie, Apache, Comanche, Osage and Missouri Indians.

When the Commission served notice of such assessments the Company filed its protests, the several notices and protests being consolidated for hearing. After hearing the Commission entered its order sustaining the assessments and upon appropriate statute the company appeals to this court.

The chief question, and as we not regard it, the controlling question is whether oil production under such admitted circumstances is subject to the state tax involved.

This question was determined in 32270, *The Texas Company vs. Oklahoma Tax Commission*, this day decided. Here also we conclude that the rule of immunity specifically upheld by the Supreme Court of the United States is binding and conclusive. See *Howard v. Gypsy Oil Co.*, 247 U. S. 504, 62 L. Ed. 1239, and *Large Oil Company v. Howard*, 248 U. S. 549, 63 L. Ed. 416.

Other questions are here presented by the Company, but we deem it unnecessary to discuss or consider them in view of this determination.

By virtue of the controlling force of the authorities cited we conclude that this oil production, or oil as produced, was not subject to the tax involved.

Therefore the order appealed from is reversed, with directions that the tax assessments involved be vacated.

Hurst, C.J., Davison, V.C.J., Riley, Gibson, and Luttrell, concur.

Corn, J., Dissents.

(5624)

